IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6127 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEORGE CINEMA - Petitioner(s)
Versus
PRESCRIBED OFFICER & MAMLATDAR & 1 - Respondent(s)

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Appearance :
MR MB GANDHI for Petitioner(s) : 1,
MR UR BHATT, AGP, for Respondent(s) : 1-2

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 12/04/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

The petitioner firm has challenged the legality and

validity of the order dated 6th August, 1999 passed by the Prescribed Officer and Mamlatdar, Deesa – respondent No. 1 herein - whereby the petitioner has been directed to pay, in all, Rs. 6,26,550/- by way of entertainment tax and penalty thereon under the provisions of sec. 9(1) and sec.9(3) respectively of the Gujarat Entertainment Tax Act, 1977 (hereinafter referred to as 'the Act').

2. Certain undisputed facts arising in the petition are as under:

2.1 The theatre had been inspected by respondent No. 1 on 9th April, 1998 and at that time no irregularity or illegality had been found by him. Thereafter the theatre had been inspected by the Collector, Dist. Banaskantha, on 19th June, 1998. He had found certain irregularities at the time of his inspection. He found 52 spectators in the balcony section of the theatre, but only 48 tickets were issued for the said section. It was also found that 3 tickets of 'D' series issued by the theatre were not genuine and it was believed that duplicate tickets had been issued to avoid payment of entertainment tax. Some other irregularities were also found, but they are not of much importance to the subject-matter of the petition

and, therefore, we do not deal with the same.

2.2 It was found that 25,000 tickets had been printed in A, B, C & D series, respectively. When the theatre had been inspected on 9th April, 1998 by respondent No. 1, tickets in A, B & C series had already been sold earlier and even tickets upto 1601 in 'D' series had been sold.

2.3 Looking to the aforesaid irregularities, which had been fond on 19th June, 1998, respondent No. 1 had issued a show-cause notice to the petitioner calling upon it to show-cause as to why tax and penalty should not be recovered from the petitioner. In pursuance of the show-case notice issued by respondent No. 1, reply was given and after considering the reply, respondent no. 1 imposed tax and penalty of Rs. 6,26,550/- on the hypothesis that the petitioner had committed illegalities in respect of tickets which were in series A, B & C also. The said order dated 16th October, 1998 passed by respondent No. 1 had been challenged by the petitioner by filing a revision application and the revision application had been allowed and the matter had been remanded to respondent no. 1. Once again, in pursuance of the remand order, respondent No. 1 had issued show-cause notice

dated 15.3.1999 on the same grounds. The said show-cause notice had been replied to by the petitioner and ultimately, after hearing the petitioner, respondent No. 1 had passed an order dated 6th August, 1999, whereby entertainment tax of Rs. 2,50,620/- had been imposed upon the petitioner, whereas penalty of Rs. 3,75,930/- had been imposed on the petitioner under sec. 9(3) of the Act.

3. We have heard learned advocate Shri M.B. Gandhi appearing for the petitioner and learned AGP Shri Uday Bhatt appearing for the respondent authorities.

4. We are impressed by the argument advanced by learned advocate Shri Gandhi that at the previous inspection, which had taken place on 9th April, 1998, all tickets of A, B & C series had already been sold and even 1601 tickets of series D had also been sold. Everything was found proper at that time and, therefore, conclusion of respondent No. 1 that irregularities had been committed in relation to tickets of series A, B & C cannot be said to be correct. He has fairly submitted that if penalty is imposed in relation to tickets, which had been sold after the last inspection i.e. after 9th April, 1998, the

petitioner would not mind paying the same as there was some mistake in printing of the tickets of the said series.

5. On the other hand, learned AGP Shri Uday Bhatt appearing for the respondents has submitted that the impugned order passed by respondent No 1 is just, legal and proper because some mistakes were found in printing of tickets of 'D' series and, therefore, the possibility of mistakes or irregularities committed in series A, B & C cannot be ruled out. He has, therefore, submitted that the petition should be dismissed.

6. Upon hearing the learned advocates and looking to the facts of the case, it is crystal clear that all tickets belonging to series A, B & C had already been sold on 9th April, 1998 and at the time of the said inspection, no irregularity or illegality had been found by respondent No.1. In view of the said fact, in our opinion, to recover any entertainment tax or impose any penalty by observing that irregularity had been committed in relation to issuance of tickets belonging to series A, B & C would be absolutely unjustified. Respondent No. 1 has not stated any reason for coming to the conclusion

that there were irregularities in relation to tickets belonging to series A, B & C. Having once found by him on his visit on 9th April, 1998 that everything was proper, without assigning any reason, he could not have changed his stand by saying that some irregularities or illegalities were committed by the petitioner in relation to the said tickets also.

7. We, thus, come to the conclusion that the impugned order, so far as it pertains to demand of entertainment tax and imposition of penalty in respect of tickets belonging to series A, B & C, is absolutely unjustified.

8. So far as tickets belonging to series 'D' are concerned, it is not in dispute that tickets up to serial No. 1601 had been sold on 9th April, 1998, when the previous inspection had taken place. Thus, even so far as tickets with regard to series 'D' are concerned, respondent No. 1 could not have taken into account 4629 tickets of series 'D' because at the time when the inspection had taken place, tickets up to serial No. 4629 had been sold, whereas 1601 tickets had already been sold at the time of earlier inspection i.e. on 9th April, 1998. Therefore, 3028 tickets could have been sold by

the petitioner theatre and, therefore at the most, tax could have been demanded only in respect of the said 3028 tickets.

9. Thus, we are of the view that at the most entertainment tax in respect of 3028 tickets could have been recovered by respondent No. 1 at the relevant time. Upon perusal of the impugned order, it is clear that entertainment tax was payable at the rate of Rs. 3.10 ps. per ticket. Thus, the amount of entertainment tax payable by the petitioner could not have been more than Rs. 9,386.80 ps.

10. So far as 4 ticketless spectators are concerned, the Mamlatdar had come to the conclusion that the amount of tax in respect of those 4 tickets should be Rs. 3,770/-. Looking to the facts of the case, the said finding is not disturbed.

11. Thus, the petitioner should have been asked to pay Rs. 9,386.80 ps. by way of entertainment tax in respect of tickets of 'D' series and Rs. 3,770/- in respect of assessment of entertainment tax in relation to 4 tickets. Thus, in all, Rs. 13,156.80 ps. would be the amount of

entertainment tax which could have been recovered by respondent No. 1 from the petitioner.

12. Looking to the facts of the case, and more particularly in view of the possibility that there could have been some mistake in printing of the tickets, in our opinion, it would be sufficient if penalty @ 10% is imposed on the amount of entertainment tax. We, therefore, substitute the amount of penalty by imposing penalty of 10% on the aforesaid two amounts of entertainment tax, which the Mamlatdar could have recovered from the petitioner.

13. For the aforesaid reasons, we are of the view that respondent No. 1 committed an error in calculating the amount of tax and penalty thereon and, therefore, we quash the impugned order. However, as stated hereinabove, we direct that the petitioner shall pay Rs. 16,926.80 by way of entertainment tax and Rs. 1,692/- by way of penalty. The said amount of Rs. 18,619/- shall be paid to respondent No. 1 within one month from today.

The petition is disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

(Anil R. Dave, J.)

(Harsha Devani, J.)

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